

1 Michael Winsor
2 Special Assistant Attorney General
3 State Auditor's Office
4 840 Helena Ave.
5 Helena, MT 59601
6 (406) 444-2040

Attorney for the Department of Insurance

7 **BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE**
8 **STATE OF MONTANA**

9 IN THE MATTER OF THE INSURE MONTANA)
10 RENEWAL APPLICATION DENIAL OF)
11 MILES CITY GREENHOUSE and)
12 JUSTIN DIGHANS,)
13 Respondents.)

Case No. INS-2009-1

**NOTICE OF HEARING ON
DENIAL OF RENEWAL
APPLICATION**

13 TO: Justin Dighans
14 Miles City Greenhouse
15 2626 Valley Dr. E.
16 Miles City, MT 59301

16 **PLEASE TAKE NOTICE:**

17 On Wednesday, January 14, 2009, at 9:00 a.m. at the Office of the State Auditor and
18 Insurance Commissioner, 840 Helena Avenue, Helena, Montana, First Floor Conference
19 Room, a hearing will be held regarding Respondents' renewal application denial.

20 Staff of the Insurance Department (Department) of the office of the Montana State
21 Auditor and Commissioner of Insurance (Commissioner), pursuant to the authority of the
22 Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the
23 Commissioner affirm the denial of the Respondents' Insure Montana renewal application for
24 failure to comply with Mont. Code Ann. § 33-22-2008(c).

25 The Commissioner has authority to take such action under the provisions of Mont.
26 Code Ann. §§ 33-1-311, 33-1-314, 33-1-701 and 33-22-2008(1)(c).

1 The State Auditor's Office will make reasonable accommodations for persons with
2 disabilities who wish to participate in this hearing or need an alternative accessible format of
3 this Notice. If you require an accommodation please contact Darla Sautter, State Auditor's
4 Office, 840 Helena Avenue, Helena MT 59601, Phone: (406) 444-2726, Fax: (406) 444-3497,
5 no later than 5:00 p.m. fourteen (14) days before the hearing to advise of the nature of the
6 accommodation that you need.

7 **REASONS FOR ACTION**

8 There is reasonable cause to believe that the following facts will be proven true and
9 justify the denial of the Respondents' Insure Montana renewal application.

10 **FACT ASSERTIONS**

11 1. Respondent Justin Dighans is a Montana resident and the owner of Miles City
12 Greenhouse.

13 2. Respondent Miles City Greenhouse was a participating business in the Insure
14 Montana Program since 2007.

15 3. On September 1, 2008, all businesses participating in the Insure Montana program
16 including the Respondents were provided with a newsletter that notified participating
17 businesses that renewal applications would not be accepted after October 31, 2007.

18 4. In the last week of September, 2008, all participating businesses including the
19 Respondents were sent renewal applications with a cover notice explaining that the application
20 must be completed and submitted to the Insure Montana Program by October 31, 2008.

21 5. On October 21, 2008, all businesses, including Respondents, who had failed to
22 submit renewal applications by October 21, 2008, were mailed a warning notice that the
23 renewal applications must be submitted by October 31, 2008.

24 6. On October 28, 2008, employees of Miles City Greenhouse submitted employee
25 renewal applications by fax.

26 7. On November 10, 2008, Miles City Greenhouse submitted a business renewal
27 application by fax.
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1 8. On December 1, 2008, all businesses that had not submitted renewal applications,
2 including Respondents, were mailed a notice of closure, effective December 31, 2008, for
3 failure to complete the required renewal process with the Insure Montana program.

4 9. On December 9, 2008, the Department of Insurance received a request for hearing
5 from the Respondents.

6 CONCLUSIONS OF LAW

7 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. §
8 2-15-1903.

9 2. The Montana Insurance Department (Department) is under the control and
10 supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

11 3. The Commissioner shall administer the Department to protect insurance consumers
12 pursuant to Mont. Code Ann. § 33-1-311.

13 4. Service of process was effectuated by mail pursuant to Mont. Code Ann. § 33-1-
14 314.

15 5. The Commissioner and the Department have jurisdiction over this matter. Mont.
16 Code Ann. § 33-1-311.

17 6. An eligible small employer may submit a new application for the premium incentive
18 payments and premium assistance payments or the tax credit anytime during the year, but in
19 order to maintain the employer's registration for the next year, the registration application
20 must be renewed each year. Mont. Code Ann. § 33-22-2008(b).

21 7. "The commissioner shall begin accepting renewal applications on October 1 of each
22 year and stop accepting renewal application on October 31 of each year." Mont. Code Ann. §
23 33-22-2008(c).

24 8. The Commissioner does not have discretion to accept renewal applications
25 subsequent to October 31 of each year because of the mandatory language contained in Mont.
26 Code Ann. § 33-22-2008(c) and there are no exceptions.

1 9. The Department complied with Mont. Code Ann. § 33-22-2008(c) by denying the
2 Respondents' renewal application.

3 **RELIEF REQUESTED**

4 The Department seeks that its denial of the Respondents' Insure Montana renewal
5 application be affirmed as the denial comports with the mandatory language of Mont. Code
6 Ann. § 33-22-2008(c) to which there is no exception.

7 **STATEMENT OF RIGHTS**

8 You, Justin Dighans and Miles City Greenhouse, are entitled to a hearing to respond to
9 this Notice and present evidence and arguments on all issues involved in this case. A formal
10 hearing has been scheduled as set out in the first page of this Notice before an impartial
11 hearing examiner appointed by the Commissioner as provided in the Montana Administrative
12 Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

13 You have a right to be represented by legal counsel at any and all stages of this
14 proceeding. If the attorney you choose has not been admitted to the practice of law
15 in the State of Montana, she or he must comply with the Montana State Bar requirements for
16 appearing *pro hac vice* and *Application of American Smelting and Refining, Co.*, 164 Mont. 139,
17 520 P.2d 103 (1973); and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v.*
18 *O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

19 **CONTACT WITH COMMISSIONER'S OFFICE**

20 If you have questions or wish to discuss this matter, please contact Michael Winsor,
21 Special Assistant Attorney General, State Auditor's Office, 840 Helena Ave, Helena, MT,
22 59601, (406) 444-2040 or, within Montana, (800) 332-6148. If you are represented by an
23 attorney, please make any contacts with this office through your attorney.

24 **POSSIBILITY OF DEFAULT**

25 Failure to attend the hearing will result in the entry of a default order imposing the
26 relief requested in this notice and any sanctions available under Montana law, without any
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1 additional notice to you, pursuant to Mont. Admin. R. 6.2.101 and the Attorney General's
2 Model Rule 10, Mont. Admin. R. 1.3.214.

3 DATED this 6th day of January, 2009.

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7 Michael Winsor
8 Special Assistant Attorney General
9 Montana State Auditor's Office

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on the 6 day of January, 2009, I served a true and accurate
12 copy of the foregoing Notice Hearing on Proposed Agency Action upon the Respondent, by
13 certified mail, postage prepaid, receipt # 7007 1490 0005 0571 7463 and upon the
14 Hearing Examiner, by U.S. mail, postage prepaid, at the following addresses:

15 Justin Dighans
16 Miles City Greenhouse
2626 Valley Dr. E.
Miles City, MT 59301

17 Michael J. Rieley, P.C.
18 7 West 6th Avenue
19 P.O. Box 1211
20 Helena, MT 59624
(Hearing Examiner)

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25 Darla Sautter
26 Legal Administrative Secretary
27 Montana State Auditor's Office
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